this class of oil-producers from pipe-line carriers in the exercise of a monopoly. Since the act cannot well be regarded as divisible, the inclusion of all pipe-line carriers would seem to render it unconstitutional.

RELATION OF PRICE *v.* NEAL TO THE DOCTRINE OF PURCHASER FOR VALUE WITHOUT NOTICE. — The rule of *Price* v. *Neal* which denies the right of a drawee of a bill of exchange or a check to recover money paid under a mistake as to the genuineness of the drawer's signature is firmly established,[1] but text writers have disputed its soundness,[2] or acquiesced only on the ground of policy.[3] It is now generally agreed that the holder of the instrument does not warrant its genuineness by surrendering it for payment even though he signs the instrument in acknowledgment thereof.[4] The present criticism of the rule is ultimately based upon the notion that the buying of the instrument and the payment by the drawee are distinct transactions which should be viewed separately.[5] Thus it is urged that the competing equities are not in the same *res*, the holder's equity being in the purchase price paid for the instrument, while the drawee's equity is in the sum paid to the holder.[6] It may be conceded that as a matter of mercantile technique there are two different transactions. But as a matter of substance they constitute a single purchase. The holder buys the instrument itself only for reasons of commercial convenience. The real thing bargained for is payment by the drawee. If instead of an order for money, he had bought an order for a conveyance of Blackacre, the substance of the transaction would be obvious.[7] The

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and not unduly oppressive upon individuals." See Lawton *v.* Steele, 152 U. S. 133, 137, 14 Sup. Ct. 499, 501. See also C., B. & Q. Ry. Co. *v.* Drainage Commissioners, 200 U. S. 561, 593, 26 Sup. Ct. 341, 350. It is doubtful, however, whether any of the petitioners in the present suit can raise this objection, since all of them, save perhaps the Uncle Sam Oil Co., were found to be extensive purchasers of crude oil.

[1] For a collection of the authorities see the article by Professor Ames in 4 HARV. L. REV. 297, and the recent text on QUASI CONTRACTS by Woodward, §§ 80–92.

[2] See MORSE, BANKS AND BANKING, § 464; 2 DANIEL, NEGOTIABLE INSTRUMENTS, 5 ed., § 1361; KEENER, QUASI CONTRACTS, 154–158, n.

[3] See WOODWARD, QUASI CONTRACTS, § 87.

[4] See 17 HARV. L. REV. 580; 56 AM. L. REG. (N. S.) 122. But see 2 DANIEL, NEGOTIABLE INSTRUMENTS, 5 ed., § 1361; 58 CENT. L. J. 69.

Similarly, a bank receiving payment of a draft with a forged bill of lading attached does not warrant the genuineness of the bill of lading. Leather *v.* Simpson, L. R. 11 Eq. 398; Goetz *v.* Bank of Kansas City, 119 U. S. 551, 7 Sup. Ct. 318. See WILLISTON, SALES, § 435. These cases are also important because they demonstrate that the rule of Price *v.* Neal is not based upon the drawee's knowledge of the drawer's signature.

[5] See KEENER, QUASI CONTRACTS, 156; WOODWARD, QUASI CONTRACTS, §§ 84, 134.

[6] See WIGMORE, SUMMARY OF QUASI CONTRACTS, 25 AM. L. REV. 695, 706, n.; WOODWARD, QUASI CONTRACTS, § 84.

[7] *Cf.* People *v.* Swift, 96 Cal. 165; State *v.* Wells, Fargo & Co., 15 Cal. 336. See 4 HARV. L. REV. 310, n.

A bill of exchange or a check even though genuine is only an order. It does not give the holder a right against the drawee. Hopkinson *v.* Forster, L. R. 19 Eq. 74; Schroeder *v.* Central Bank of London, 34 L. T. R. 735; Bank of the Republic *v.* Millard, 10 Wall. (U. S.) 152. *Contra*, Munn *v.* Burch, 25 Ill. 35.

fact that the property right is obtained directly and not through the wrongdoer should make no difference in considering the merits of the parties. If the wrongdoer stole the money from the drawee, he would have no more right to it equitably than the forged order gave him, and the drawee would be no more responsible for his possession of the money than for his drawing of the order. Yet if he paid the money in due course, the person who received it would admittedly be entitled to keep it. Now if the wrongdoer accomplishes his purpose by means of a forged order instead of a trespass, is not the innocent purchaser who receives payment in the same position equitably? [8] The device of an order simply expands the transaction and makes it triangular.[9] It affords no reason for changing the substantive rights of the parties.[10]

An examination of the true basis of the doctrine of purchaser for value without notice makes clearer the correctness of its application in *Price* v. *Neal*. The statement that the competing equities are not in the same *res* is misleading. Even in the typical case where one buys property from a trustee, the purchaser does not succeed because he has an equity in the property, strictly speaking. Had he failed to obtain the property, the *cestui* would be preferred. This is usually explained by reciting the maxim that as between equal equities the prior in time shall prevail. But since two mutually exclusive interests cannot exist in the same property, this really means that there is only one equity in the property, that of the *cestui*. So far as the property is concerned, the purchaser simply has the merit of having paid value for it innocently. Yet if he obtains the property, he may keep it. For, since equity is supplemental to the law and modifies the legal situation only when necessary to achieve justice, it cannot properly deprive him of property which he has acquired for value innocently.[11] Consequently, his position is invulnerable. The purchaser of a forged order who receives payment from the drawee without notice of the fraud is in substantially the same position. He has the title to the money, the merit of having paid value for it to the wrongdoer, and a clear conscience.

But even conceding that the purchase of the instrument is a distinct transaction, the purchaser's automatic loss of his claim for restitution against the wrongdoer upon receiving payment from the drawee might fairly be advanced as a reason for regarding him as a purchaser for value. He cannot retain both the payment and the right to restitution. He already has the payment. The fact that he may repudiate the payment and seek restitution, while it presents a logical difficulty in finding value,

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[8] An assignee for value of an invalid claim is allowed to keep what he collects from the obligor without notice of the invalidity of his claim. Merchants' Ins. Co. *v.* Abbott, 131 Mass. 397; Youmans *v.* Edgerton, 91 N. Y. 403.

[9] It makes no difference that the instrument was negotiated before collection by the innocent holder for value, the only effect being to lengthen the fraudulent transaction. Neal *v.* Coburn, 92 Me. 139, 42 Atl. 348.

[10] A somewhat similar difficulty has been experienced in considering whether a payee of a negotiable instrument may be a *bonâ fide* purchaser. Some courts have considered that the mere form of the transaction makes it impossible. Vorce *v.* Rosenberry, 12 Neb. 448, 11 N. W. 879; Hathaway *v.* County of Delaware, 185 N. Y. 368, 78 N. E. 153. But the contrary is well recognized. Watson *v.* Russell, 3 B. & S. 34; Boston Steel & Iron Co. *v.* Steuer, 183 Mass. 140, 66 N. E. 646. See 23 BANK. L. J. 595.

[11] Boone *v.* Chiles, 10 Pet. (U. S.) 177, 210; Gerrard *v.* Saunders, 2 Ves. 454, 458.

should make no more difference than it does in the case of a defrauded purchaser, or an infant. Both may avoid their transactions, yet both are accorded the benefit of the doctrine of purchaser for value. Therefore where the circumstances are such that the conscious acceptance of title is unnecessary, even though there be a right to repudiate, the automatic loss, also, of a valuable claim to restitution should be value as much as a conscious surrender.[12] Thus in a recent case where the wrongdoer who because of a previous misappropriation was under a duty to remove an assessment lien, did so by means of a forged check payable to the city collector, the owner of the property though ignorant of the lien was allowed to retain the benefit of its discharge as against the defrauded drawee. *Title Guarantee & Trust Co.* v. *Haven*, 139 N. Y. Supp. 207 (Sup. Ct., App. Div.).[13]

MARTIAL LAW. — Military jurisdiction is of three kinds.[1] The first may be called military law and consists of a body of rules governing the internal affairs of the army. By the United States Constitution the power to make these rules is expressly vested in Congress.[2] The second consists of those customs and treaties which govern dealings with belligerent armies and peoples and are recognized as a part of international law.[3] The third type is martial law, to which in time of need all persons may be subject, and which, it has been well said, "is nothing more nor less than the will of the general who commands the army."[4] In view of the universal demand for security to person and property which has everywhere expressed itself in the form of constitutional guarantees against interference with individual rights, it is often of the utmost importance to determine the source and scope of this arbitrary jurisdiction.

Unfortunately the authorities have taken conflicting views on these questions. In the leading case of *Ex parte* Milligan, Chief Justice Chase suggested that the United States Constitution gave Congress the power to declare martial law by implication from the powers to declare war,

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[12] By the better view the cancelation of a pre-existing debt constitutes value. The argument that the debt will be revived if the property is taken from the purchaser simply amounts to saying that the value can be restored, but there is no recognized principle that a purchaser for value shall not be allowed to hold property transferred to him if the value which he has given can be and is restored to him. See WILLISTON, SALES, § 620.

[13] Similarly, where a trustee misappropriates funds of one trust and later pays the *cestui* with funds of another trust, the *cestui* may keep the payment. Thorndike *v.* Hunt, 3 DeG. & J. 563; Taylor *v.* Blakelock, L. R. 32 Ch. 560.

Where bonds negotiable by delivery are stolen, sold to a *bonâ fide* purchaser, regained by fraud, and then restored to the original owner, he may keep them although he was ignorant of the whole transaction. London & County Banking Co. *v.* London & River Plate Bank, L. R. 21 Q. B. D. 535. *Cf.* Nassua Bank *v.* National Bank of Newburgh, 159 N. Y. 456, 54 N. E. 66.

[1] See *Ex parte* Milligan, 4 Wall. (U. S.) 2, 141, 142; LIEBER, THE JUSTIFICATION OF MARTIAL LAW, 1.

[2] Art. 1, § 8, cl. 14.

[3] See WILSON, HANDBOOK OF INTERNATIONAL LAW.

[4] See *In re* Egan, 8 Fed. Cas. No. 4303, by Nelson, J.